Richard A. Grossman (SBN 244251)
L/O Richard A. Grossman, Esq.
rag @ law-grossman.com
18663 Ventura Blvd., Ste. 220
Tarzana, CA 91356
Mail: POB 343, Simi Valley, CA 93062
Tel: (805) 624-2998 Fax: (805)624-7380
Attorneys for: Plaintiff Aquawood, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

AQUAWOOD, LLC, a California limited liability company, Plaintiff, vs. AQUA-LEISURE INDUSTRIES, INC., a Massachusetts corporation; and DOES 1 – 10, Defendants.	Case No.: 2:17-cv-02879 COMPLAINT FOR: 1. COPYRIGHT INFRINGEMENT 2. CONTRIBUTORY COPYRIGHT INFRINGEMENT DEMAND FOR JURY TRIAL

AQUAWOOD, LLC (hereinafter "Aquawood") alleges for its Complaint against Defendants AQUA-LEISURE INDUSTRIES, INC. (hereinafter "AQUA-LEISURE") and DOES 1-10, inclusive (all defendants hereinafter collectively, "Defendants"), as follows:

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to the Copyright Act of 1976, 17 U.S.C. §101, *et seq*. This Court also has supplemental jurisdiction

pursuant to 28 U.S.C. § 1331, in that a federal question exists, and 28 U.S.C. §1338(a) and (b), as a civil action arising under any act of Congress relating to copyrights. This Court has supplemental jurisdiction over Plaintiff's claims, pursuant to 28 U.S.C. §1367(a).

VENUE

2. Venue in this District is proper under 28 U.S.C. § 1391(b)(2).

PARTIES

3. Aquawood is, and at all times relevant to this Complaint was, a limited liability company organized and doing business in the State of California.

4. Aquawood is informed and believes, and on that basis alleges, that AQUA-LEISURE is, and at all times relevant to this Complaint was, a corporation incorporated and existing under the laws of the State of Massachusetts, and doing business in, among other places, the State of California and this judicial district, including directly and indirectly with respect to the manufacturing, reproduction, copying, duplicating, preparing of derivative works, displaying, advertising, transmitting, marketing, distributing, selling, offering to sell, transferring, and/or renting of the goods subject to this complaint to California residents, such that exercise of jurisdiction over it does not offend traditional notions of fair play and substantial justice.

5. The true names and capacities, whether individual, corporate, or otherwise, of Defendants DOES 1 through 10, inclusive, are unknown to Aquawood, and Aquawood therefore sues these defendants by their fictitious names and capacities in place of their fictitious names. Aquawood will amend this Complaint to allege the true names and capacities of these defendants when the same have been ascertained.

6. Aquawood is informed and believes that Does 1 through 10, inclusive, have acted or failed to act in concert with AQUA-LEISURE as alleged herein, and are responsible in some manner for the injuries and damages herein alleged.

Aquawood is further informed and believes that at all times herein mentioned, the defendants sued herein as Does 1 through 10, inclusive, were the agents, affiliates, subsidiaries, employees, co-conspirators, and/or alter egos of AQUA-LEISURE and that in so doing the acts and things herein alleged, those defendants were acting within the scope and course of that agency and with the permission and consent of each of the other defendants.

GENERAL ALLEGATIONS

7. Aquawood, under the brand name "Banzai", designs and markets various toys and sports entertainment equipment, including the *Banzai Dive N' Fish* (hereinafter "the Dive N' Fish") and the *Banzai Feeding Frenzy Octopus Game* (hereinafter "the Feeding Frenzy Octopus Game"). The products Aquawood markets, including the Dive N' Fish and the Feeding Frenzy Octopus Game, are sold to retailers throughout the United States.

8. The Dive N' Fish is a children's pool toy where children use a small pool net to collect items while swimming underwater. It is comprised of two distinctive orange-colored plastic fish, two distinctive yellow-colored plastic fish, two distinctive green-colored plastic turtles and one skimming net used to collect the previously mentioned items. The orange-colored plastic fish (hereinafter, "Orange Banzai Fish") have a unique design that incorporates oversized white eyes with black pupils and an oversized jaw which exposes a lower row of white teeth. The body of the Orange Banzai Fish also features distinctive groove designs on the sides and fins. The yellow-colored fish are smaller in size and have a unique design that incorporates smaller white eyes with black pupils and a relatively large mouth with exposed white teeth (hereinafter, "Yellow Banzai Fish"). The green-colored turtle figures have a unique design that incorporates a hard shell with nine protruding points, a tail, a head, feet, small white eyes with black pupils, and a mouth with exposed white teeth (hereinafter, "Banzai Turtle"). The skimming net has a unique design that incorporates green and yellow colors, with a circular

opening, extending handle and fine white mesh netting (hereinafter, “Banzai Net”) (the Orange Banzai Fish, Yellow Banzai Fish, Banzai Turtle, and Banzai Net referred to collectively hereinafter as the “Banzai Pieces”. True and correct photographic images depicting the Banzai Pieces are attached hereto as **Exhibit A**. True and correct photographic images depicting the Dive N’ Fish are attached hereto as **Exhibit B**.

9. The Feeding Frenzy Octopus Game is a children’s pool toy where children insert included objects into an octopus shaped netting to make it float in a pool. It is comprised of two Orange Banzai Fish, two Yellow Banzai Fish, two Banzai Turtles and one purple octopus with an opening to place the previously described items inside. The purple octopus has large eyes, an open mouth and features a net body which allows it to float after a sufficient number of the fish and turtle figures are placed through its mouth opening. True and correct photographic images depicting the Feeding Frenzy Octopus Game are attached hereto as **Exhibit C**.

10. In or about early 2012, Aquawood developed, marketed, and authorized Manley Toys Limited to publish, the Dive N’ Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, to retailers throughout the United States. Aquawood invested considerable amounts of time, money and resources in developing, marketing and licensing the Dive N’ Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces.

11. In or about April 2015, Aquawood submitted a complete application, deposit, physical samples or other ID materials, and the registration fee for copyright registration of the Dive N’ Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces with the United States Copyright Office. On or about April 27, 2015, Aquawood was issued a Certificate of Registration therefor and assigned Registration No. VA. 1-957-403.

///

DEFENDANTS' INFRINGING CONDUCT

12. Aquawood is informed and believes, and on that basis alleges, Defendants are, among other things, a manufacturing, wholesale, and retail company that manufactures, markets, sells, and offers for sale children's pool toys to retailers and the consuming public in the United States, and in the State of California, including the "Sink & Scoop Game."

13. In or about early 2015, it was discovered that, notwithstanding Aquawood's rights in the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, Defendants acting without Aquawood's permission or consent, have utilized, manufactured, reproduced, copied, duplicated, prepared derivative works, displayed, advertised, transmitted, marketed, distributed, sold, offered to sell, transferred, rented, and/or otherwise performed Aquawood's copyright-protected Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces in the form of a counterfeit pool toy named the "Sink & Scoop Game" (hereinafter the "Infringing Product"), which displays and contains pieces that are identical to or indistinguishable from Aquawood's Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces. Aquawood is informed and believes, and on that basis alleges, Defendants' activities concerning the Infringing product began in or about early 2015 and continue to this day. Just like the Orange Banzai Fish, the Infringing Product includes an orange colored fish with oversized white eyes with black pupils, an oversized jaw which exposes a lower row of white teeth and groove designs on the sides and fins which are identical to or indistinguishable from the Orange Banzai Fish. Just like the Yellow Banzai Fish, the Infringing Product includes a yellow-colored fish with small white eyes, black pupils and a relatively large mouth with exposed white teeth which are identical to or indistinguishable from the Yellow Banzai Fish. Just like the Banzai Turtle, the Infringing Product includes green-colored turtle figures with a hard shell with nine protruding points, a tail, a head, feet, small white eyes with black

pupils, and a mouth with exposed white teeth which are identical to or indistinguishable from the Banzai Turtle. Just like the Banzai Net, the Infringing Product includes a green and yellow colored skimming net of identical size with a circular opening, extending handle and fine white mesh netting which are identical to or indistinguishable from the Banzai Net. The Infringing Product also utilizes the same materials of construction. True and correct photographic images depicting the Infringing Product are attached hereto as **Exhibit D**. True and correct photographic images depicting the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, side-by-side with the Infringing Product, are attached hereto as **Exhibit E**.

FIRST CLAIM FOR RELIEF

(Copyright Infringement against All Defendants - 17 U.S.C. §501(a))

14. Aquawood hereby repeats and realleges Paragraphs 1 through 13 of this Complaint as though fully restated herein.

15. Aquawood is the original and exclusive owner of all intellectual property rights, including copyright and the standing to sue for infringement thereof, in the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces. At all times relevant hereto, the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, have been copyright protected under the laws of the United States.

16. At all times relevant hereto, Aquawood owned the exclusive rights to manufacture, duplicate, distribute, advertise, transmit, sell, and offer to sell copies of the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces in, among other territories, the United States.

17. Aquawood is informed and believes, and on that basis alleges, Defendants had actual notice of Aquawood's exclusive copyright rights in the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, including but not limited to the existence of the Dive N' Fish and the Feeding

Frenzy Octopus Game, inclusive of the Banzai Pieces, in the commercial market place for a number of years.

18. Defendants failed to seek or obtain Aquawood's consent or authorization to utilize, manufacture, reproduce, copy, duplicate, prepare derivative works, display, advertise, transmit, market, distribute, sell, offer to sell, transfer, rent, and/or otherwise perform Aquawood's copyright-protected Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces.

19. Without permission, authorization, license or otherwise, Defendants wantonly, intentionally, knowingly, and/or with reckless disregard for Aquawood's rights utilized, manufactured, reproduced, copied, duplicated, prepared derivative works, displayed, advertised, transmitted, marketed, distributed, sold, offered to sell, transferred, rented, and/or performed Aquawood's protected works by copying, offering, advertising, promoting, marketing, retailing, selling, and distributing replicated or related products, such as the Infringing Product, which are at a minimum substantially similar to Aquawood's copyright protected Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces.

20. Defendants' acts as herein alleged constitute infringement of Aquawood's copyright works, including Aquawood's exclusive rights to reproduce, distribute, and/or sell such protected material.

21. Aquawood is informed and believes, and on that basis alleges, that Defendants caused damages to Aquawood from, among other things, the illegal and wrongful manufacture, use, duplication, distribution, marketing, advertising, transmission, sale and otherwise profiting from the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, which at all times relevant hereto were and/or are exclusively owned by Aquawood.

22. As a proximate result of Defendants' knowing and intentional copyright infringement of the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, without Aquawood's prior authorization or consent

as alleged herein, Defendants have caused and will continue to cause substantial and irreparable harm to Aquawood and will continue to cause Aquawood to suffer damages. Aquawood is therefore entitled to injunctive relief, actual damages, Defendants' profits, or other benefits, the exact amount of which will be proven at trial.

23. Aquawood is entitled to damages and equitable relief against Defendants, including an injunction requiring that Defendants, its agents, servants and employees and all persons and entities acting in concert with them to:

a. Be enjoined from directly or indirectly infringing upon Aquawood's copyright in the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, or to continue to manufacture, duplicate, market, offer, sell, dispose of, license, lease, transfer, display, transmit, advertise, reproduce, develop or manufacture any works derived or copied from the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, or assist others in any such activity.

b. Be ordered to return to Aquawood all originals, copies, facsimiles, or duplicates of any products containing the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, in Aqua Leisure's and/or Defendants' possession, custody, and/or control.

SECOND CLAIM FOR RELIEF

(Contributory Copyright Infringement against All Defendants - 17 U.S.C. §501(a) and Common Law)

24. Aquawood hereby repeats and realleges Paragraphs 1 through 23 of this Complaint as though fully restated herein.

25. Defendants have and are engaging in illegal conduct including but not necessarily limited to the marketing, promotion, advertisement, offer for sale, sale

and distribution of works that infringe on Aquawood's copyrights in their works.

26. In addition to Defendants, Toys'R'Us-Delaware, Inc. and others have and are also infringing on Aquawood's copyrights in their works by utilizing, manufacturing, reproducing, copying, duplicating, preparing derivative works, displaying, advertising, transmitting, marketing, distributing, selling, offering to sell, transferring, renting, and/or performing Aquawood's protected works, including in the form of the Infringing Product, without Aquawood's permission, authorization, license or otherwise.

27. Defendants (1) had actual knowledge of the copyright infringement by Toys'R'Us-Delaware, Inc. and others, and (2) Defendants have induced, caused, or otherwise materially contributed to Toys'R'Us-Delaware, Inc.'s and others' infringing conduct with respect to the Infringing Product, by among other things, using his reputation and skill within the industry to connect, bring together, market, promote, advertise, transmit, offer to sell, sell, and/or transfer, as a middleman or third party sales representative between the manufacturer and retailers of the Infringing Product, including Toys'R'Us-Delaware, Inc. and others, whom in turn introduced the Infringing Product into the United States market.

28. Defendants' acts as herein alleged materially contributed to infringement of Aquawood's copyright works, including Aquawood's exclusive rights to reproduce, distribute, and/or sell such protected material, in violation of 17 U.S.C. §501(a), et seq. and the common law.

29. Defendants' knowing and intentional contributory copyright infringement as herein alleged has and will cause substantial and irreparable harm to Aquawood and will continue to cause damage to Aquawood. Aquawood is therefore entitled to injunctive relief, actual damages, Defendants' profits, or other benefits, the exact amount of which will be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants on all causes of action as follows:

1. For compensatory damages, and any additional profits attributable to the infringements of Aquawood's rights under the Copyright Act or other applicable law, or disgorgement of Defendants' profits, according to proof.

2. That Defendants, their directors, officers, agents, servants, employees, and all other persons in active concert or privity or in participation with Defendants be enjoined from directly or indirectly infringing Aquawood's copyrights in the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, or continuing to duplicate, market, offer, sell, dispose of, license, lease, transfer, display, transmit, advertise, reproduce, develop or manufacture any works that copy, include or are derived from the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, or assist in any such activity.

3. That Defendants, their directors, officers, agents, servants, employees, and all other persons in active concert or privity or in participation with Defendants be ordered to return to Aquawood all originals, copies, facsimiles or duplicates which contain representations of the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces, in the possession, custody, and/or control of Defendants.

4. For a full and complete accounting by Defendants of all monies received, expenses, appraisals, valuations, profits and distributions in connection with its use of the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces.

5. For a judicial determination regarding parties' rights and duties with respect to Aquawood's and Defendants' ownership interests in the intellectual property rights, including copyrights, to the Dive N' Fish and the Feeding Frenzy Octopus Game, inclusive of the Banzai Pieces.

6. That Aquawood be awarded all of its costs, including attorney's fees as permitted by law;

7. That Aquawood be awarded pre-judgment and post-judgment interest as permitted by law; and

8. For such other relief as this Court deems just and proper.

DATED: April 15, 2017

L/O RICHARD A. GROSSMAN, ESQ.

BY: /s/ Richard A. Grossman
Richard A. Grossman
Attorneys for Plaintiff AQUAWOOD, LLC

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Fed. R. Civ. P., Plaintiff hereby demands trial by jury as to all claims in this litigation.

DATED: April 15, 2017 L/O RICHARD A. GROSSMAN, ESQ.

BY: /s/ Richard A. Grossman
Richard A. Grossman
Attorneys for Plaintiff AQUAWOOD, LLC